

CONCESSION LICENSE AGREEMENT

THIS CONCESSION LICENSE AGREEMENT (this “Agreement”) is entered into on this _____ day of _____, 20____, between:

BOROUGH OF BRADLEY BEACH, a municipal corporation of the State of New Jersey, whose address is 701 Main Street, Bradley Beach, New Jersey 07720 (hereinafter, referred to as the “Borough”);

AND: _____,

whose address is _____
(hereinafter, referred to as the “Concessionaire”).

WHEREAS, the Borough advertised for receipt of bids for a Concession License at the Concession Premises located at the Oceanfront and Brinley Avenue, together with additional optional locations on Newark Avenue and Evergreen Avenue, for the rental of Beach Umbrellas and Chairs, as approved by the Borough; and

WHEREAS, the Concessionaire submitted the highest responsible bid in response to the Borough’s Notice to Bidders, which Notice is attached hereto as Exhibit A; and

WHEREAS, the Concessionaire acknowledges and agrees that the Concessionaire is familiar with the Concession Premises, as well as the Concessionaire’s designated area(s) thereupon and the Concessionaire’s permitted business activities thereat, as described in the Borough’s Notice to Bidders, Resolution of Award, and this Agreement;

NOW, THEREFORE, IT IS AGREED between the Borough and the Concessionaire that they do hereby enter into this Agreement for Concession Rights at the Concession Premises under the terms and conditions set forth as follows:

1. Integration. All provisions contained herein, together with the Notice to Bidders (Exhibit A hereto), the Resolution awarding this Concession License (Exhibit B hereto), and the Other Required Contract Documents (Exhibit C hereto) are each hereby incorporated into this Agreement by reference and made a part hereof and shall have the same force and effect as if set forth specifically and at length herein. The documents referenced in this paragraph 1, along with this Agreement, are hereinafter referred to collectively as the “Contract Documents”.

2. Description of Transaction. The Borough grants a revocable Concession License to the Concessionaire to occupy and operate a concession at the Concession Premises, as described in the Contract Documents. The initial term of this license shall commence May 1, 2022 and end October 31, 2022. Upon review of the Concessionaire’s performance during the initial term, the Borough shall have the option to extend this Agreement, at its sole discretion, for an additional two (2) years until October 31, 2024 by further Resolution. The Borough shall advise the Concessionaire as to the exercise of its option to extend this Agreement by October 1, 2022.

First Year Concession License Annual Fee
(Established by Winning Bid) \$ _____

Second Year Concession License Annual Fee
(+5.0% of First Year) (if exercised) \$ _____

Third Year Concession License Annual Fee
(+5.0% of Second Year) (if exercised) \$ _____

4. Concession Premises & Concession Operation.

D. *Garbage.* The Concessionaire agrees to keep the immediate area of its operations clean at all times, and will not permit garbage, waste or debris of any kind or nature to remain in or about said area. The Concessionaire agrees to handle and dispose of all garbage, waste and debris from its operations in accordance with the regulations established by the Borough from time to time and to police the entire area to keep same free and clear of any and all garbage, waste or debris that may have been or was generated as a result of the Concessionaire's operations.

E. *Hours of Operation.* The Concessionaire agrees that the concession permitted herein shall be conducted continuously and uninterrupted during the entire summer season which shall be defined as all days comprising and falling between the weekends associated with the Memorial Day and Labor Day Holidays of all years under this Agreement. During such time period, the Concessionaire shall be open and operating the described concession every day during all hours which are regular and customary for such business, but shall be expected to be open and operating during all hours of the Borough's beach operation. The Concessionaire may determine not to operate its concession when not feasible to do so because of inclement weather.

F. *Use of Property.* The Concession Premises is to be used solely as set forth in this Agreement and the Contract Documents and shall be subject to the terms and conditions contained therein. The Concessionaire shall be generally permitted to locate its concession area at a location of its choosing within the Concession Premises. The Borough shall be permitted to direct the Concessionaire to relocate the concession, in its discretion, for whatever reason, except that said relocation shall not unreasonably frustrate the operation of said concession. The Concessionaire and the Concessionaire's agents, representatives, servants, or employees, shall use only that portion specifically described herein, and not any other part of the beachfront, beach or boardwalk area or municipal buildings, for the Concessionaire's business operations. The Concessionaire agrees not to block any access, entrance or exit to the beach, beachfront, or boardwalk, nor encumber or obstruct nor allow the same to be obstructed or encumbered in any manner. The Concessionaire hereby expressly agrees not to interfere with the rights of the public or any person or persons lawfully using the beach, beachfront or the boardwalk. The Concessionaire understands that the area described or established is and shall be subject to the rights and use of the general public, and of the Concessionaire, during non-operating hours and the Concessionaire shall in no way interfere with such rights or use. The Concessionaire agrees that, on any question as to the use of the subject area, or as to the class of goods, wares, or merchandises to be sold by the Concessionaire, or as to the type of equipment and machines to be placed or used therein, or the general conduct thereof, the determination thereof by the Borough shall be final.

G. *Prohibited Acts.* The Concessionaire shall not perform or permit any acts or practices which may injure the Concession Premises or any building or structure located thereon. The Concessionaire shall not conduct its operations in any manner or for any purpose deemed disreputable, illegal, or unduly hazardous on account of fire or otherwise. The Concessionaire shall not solicit trade or bark or cry his, her or its wares or use any devices mechanical or otherwise which may create noise, music or sounds to attract attention to the Concessionaire's business or wares, nor to in any manner audibly attempt to advertise the business, merchandise or wares. The Concessionaire shall not place, nor allow to be placed or affixed, any signs or objects of any kind whatsoever upon, in or about the Concession Premises without same being approved in writing by the Borough. No alcoholic beverages are to be kept at or sold from the Concession Premises.

H. *Borough Control of Beachfront.* This Agreement is made and the Concessionaire accepts same expressly subject to such rules and regulations of the Borough governing the sand, beach, beachfront, pavilions, structures and all other appurtenances and property of the Borough, between the easterly line of Ocean Avenue and low water mark of the Atlantic Ocean which may now exist or which may hereafter be adopted by the Borough. The Borough does hereby reserve unto itself the right to impose further restrictions concerning any property of the Borough between

the easterly line of Ocean Avenue and the low water mark of the Atlantic Ocean, and to prohibit persons clothed in bathing attire, and persons otherwise clad in violation of any ordinance, from entering upon the property of the Borough, unless such persons comply with the rules and regulations which may now be in effect or which may hereafter be adopted and put into effect by the Borough. The Borough has the absolute right to add, delete, modify, alter or close any of its ramps, staircases or accesses to the beach. Any change in accesses to the beach as aforementioned will not affect the enforcement of the within Agreement and the Concessionaire shall make no claim whatsoever for any loss of business or profits or any claim whatsoever against the Borough arising directly or indirectly as a result of the change of accesses to the beach as aforementioned.

5. Security Deposit. The Concessionaire shall provide the Borough with a Security Deposit in the amount of one-third or 33.33% of the First Year Concession License Annual Fee, which shall be held in a non-interest bearing account by the Borough. The Security Deposit given by the Concessionaire shall secure the faithful performance of all or any of the covenants of this Agreement on the part of the Concessionaire, including the payment of Annual Fees. After the expiration of this Agreement, or any extension hereof, provided that the Concessionaire has fully and faithfully performed all such covenants and conditions of this Agreement, and is not in arrears in Annual Fees, the Security Deposit shall be returned to the Concessionaire within sixty (60) days. The Borough may apply the Security Deposit to repair and/or replace any damage done to the Concession Premises by the Concessionaire, and/or any legal fees incurred by the Borough in an attempt to enforce this Agreement or to remediate any other violation of this Agreement. In the event the Borough uses all or part of the Security Deposit during the term, the Borough shall notify the Concessionaire of same and the Concessionaire shall be required to reinstate the full balance of the Security Deposit within thirty (30) days. Upon failure to deliver such Security Deposit in the time specified, this Agreement may be terminated by the Borough. This provision, however, shall not relieve Concessionaire from making up any loss which may be sustained by the Borough by reason of its failure to comply with the provisions of this Agreement and any and all monies which may be due shall be applied to make up such loss, and if the amount thereof is insufficient, the Borough shall be entitled to recover from the Concessionaire the additional sum.

6. Insurance. The Concessionaire shall provide proof of insurance to the Borough for liability in the amounts of: (a) \$3,000,000.00 for injuries to one person; (b) \$1,000,000.00 for any one accident; (c) \$100,000.00 for property damage; and (d) Workers' Compensation/Disability Insurance with the limits of liability as required by New Jersey law, in order to provide adequate protection for the Borough, its representative employees and others lawfully on the Concession Premises, against all liabilities, damages and accidents. The Concessionaire shall maintain such insurance in force until vacating the Concession Premises. The Concessionaire shall name the Borough as an additional insured under the said policy, and said policy shall provide for at least ten (10) days advance notice to the Borough before cancellation or non-renewal thereof.

7. Events of Default. The following shall be events of default under this Agreement:

A. Failure, neglect, or refusal of the Concessionaire, its employees, or agents to perform in a timely manner any obligation under this Agreement, such as, but not limited to, failure to obtain all necessary licenses and approvals; refusal or failure to supply materials or labor; and violation of laws, ordinances, rules, regulations, or orders of any authority having jurisdiction over the Concession Premises or the Concessionaire's obligations under this Agreement; or

B. The Concessionaire's being or becoming insolvent or bankrupt or ceasing to pay its debts as they mature or making an arrangement with or for the benefit of its creditors or the appointment of a receiver, trustee, or liquidator for a substantial part of its property; or

C. A bankruptcy, winding up, reorganization, insolvency, arrangement or similar proceeding instituted by or against the Concessionaire under the laws of any jurisdiction, which proceeding had not been dismissed within thirty (30) days; or

D. Any action or answer by the Concessionaire approving of, consenting to, or acquiescing in, any such proceeding in (C) above; or

E. Failure of the Concessionaire to comply with any portion of Section 4 of this Agreement or failure to timely pay or tender Annual Fees or Security Deposit hereunder; or

F. Prohibition or suspension of the Concessionaire's performance under the Agreement in any way by the action, ordinance, decision, requirements, order, decree, or judgment of any governmental entity, public authority, or court.

8. Termination of Agreement by the Borough. If the Concessionaire shall default in the performance of any of the terms, conditions, and provisions of this Agreement, then and in that event the Borough may notify the Concessionaire in writing to remedy the neglect or default and require the Concessionaire to comply with the terms, conditions, and provisions of the Agreement which is being violated. If the Concessionaire fails to cure the neglect or fault within seventy-two (72) hours after the delivery thereof or twenty-four (24) hours when, in the opinion of the Borough, immediate action is necessary to safeguard life or property, then and in that event the Borough shall have the right to declare the Concessionaire in default, and to notify the Concessionaire to discontinue the work or any part thereof under the Agreement and at the Borough's option, to terminate this Agreement and to proceed either to perform the work herein specified at its own expense, charging the cost thereof against the Concessionaire, or may let said contract to some other qualified concessionaire, charging the cost and expense thereof in like manner.

9. Additional Remedies. In the event of default by the Concessionaire, the remedies herein provided shall be in addition to and not in substitution of the rights and remedies which would otherwise be vested in the Borough, all of which rights and remedies are specifically reserved. The failure of the Borough to exercise any of the remedies herein provided shall not preclude resort to any other remedy. The use of specific remedies herein provided shall not prevent subsequent or concurrent resort to any other remedy which by law or equity would be vested in the Borough for recovery of damages or otherwise, in the event of default by the Concessionaire.

10. Compliance with Laws and Disputes. The Concessionaire shall comply with all laws, ordinances, rules, regulations, requirements and directives of all governmental authorities. The Concessionaire shall be responsible for abiding by all ordinances and resolutions of the Borough and its Board of Health, including, but not limited to the Concessionaire's obtaining a Mercantile License. All questions or disputes that may arise as to the interpretation or meaning of the Contract Documents, Borough Ordinances, or this Agreement, shall be determined by the Borough Administrator, which decision shall be final and binding upon the Concessionaire.

11. Inspection. In addition to provisions set forth in the Bid Specifications, all of the equipment, facilities, and vehicles used by the Concessionaire in performance hereof shall be subject to inspection by the Borough or its designated representatives for the purposes of determining compliance with this Agreement. Authorized representatives of the Borough shall be permitted access at all reasonable times to all portions of the Concession Premises and shall have the right to inspect the Concession Premises to determine compliance with this Agreement.

12. Suits and Claims. It is hereby mutually covenanted and agreed that the Concessionaire, for the work to be performed by it under this contract, shall be an independent contractor and that as such it will be responsible for all damage, loss (including but not limited to attorneys' fees), injury, or casualties of every description to persons or property that may arise or be incurred in or during the conduct of the said work without regard to whether or not the Concessionaire, its agents, or employees have been negligent, and that the Borough and its agents and employees shall be by the Concessionaire held and kept free and discharged of and from any and all responsibility and liability therefore of any sort or kind; that the Concessionaire shall assume all responsibility for risks or casualties of every description for loss or injury to persons or property including costs of litigation and counsel fees arising out of the nature of the work, from the action of the elements, or from any unforeseen or unusual difficulty; that the Concessionaire shall make good any damages that may occur in the consequence of the work or any part of it and shall assume all blame, loss, and responsibility of whatsoever nature by reason of neglect or violation of any Federal, State, County, or local laws, regulations, or ordinances. It is not the intention of this Agreement or of anything herein provided to confer a third-party beneficiary right of action upon any person whatever and nothing herein before or herein after set forth shall be construed as to confer upon any person other than the Borough a right of action either under this Agreement or in any manner whatsoever. The Borough shall not be liable for any damage or injury which may be sustained by the Concessionaire or any other person, from the carelessness, negligence or improper conduct on the part of the Borough or the Borough's agents, employees, guests, licensees, invitees, or successors; or attributable to any interference with, interruption of, or for the failure of any services to be furnished or supplied by the Borough. If at any time during the term of this Agreement, the Borough shall engage in the reconstruction, repair or removal of any Borough building or property, including the boardwalk, or the streets, ramps and sidewalks adjacent thereto, and such work shall result in damage to the business of the Concessionaire, the said Concessionaire shall have no claim whatsoever for any such loss of business or profits or any other claim whatsoever against the Borough arising directly or indirectly as a result of said work.

13. Damage to Concession Premises.

A. *Casualty.* It is further agreed that if the Concession Premises or any area in the proximity of same shall become damaged by fire, storm, hurricane, flood or other act of God, to the extent that the Borough deem it necessary to acquire control of said Concession Premises for the protection of the property or for public safety, or to discontinue said concession for said reasons, the decision of the Borough as to same shall be final and binding upon the Concessionaire. The Concessionaire shall, upon the receipt of written notice from the Borough, forthwith discontinue operation of concession thereon, yield up control of the Concession Premises to the Borough, and remove all effects, equipment, structures, fixtures, and other personalty from the

Concession Premises as promptly as is reasonably possible. In the case of total destruction of the Concession Premises, not the fault of the Concessionaire, its representatives, employees or occurring otherwise as a result of Concessionaire's operations, either party may terminate this Agreement upon written notice to the other, which will be effective upon receipt. In such case, the Concessionaire shall be entitled to a pro-rata refund of the Annual Fees paid by the Concessionaire until the date of the casualty. Upon partial destruction of the Concession Premises or property located thereon, not the fault of the Concessionaire, its representatives, employees or otherwise occurring as a result of Concessionaire's operations, the Borough shall have the option but not the obligation to effect repairs or otherwise restore the Concession Premises to substantially pre-loss conditions. If the Borough does not repair and restore the Concession Premises within thirty (30) days of the casualty, and the damage substantially interferes with the operation of the Concessionaire's business, then the Concessionaire shall be permitted to terminate this Agreement and receive a pro-rata refund of the Annual Fees paid by the Concessionaire through the date of the casualty.

B. *Property Damages by Concessionaire.* In the event of any damage or injuries to the Concession Premises, or any part thereof, of any kind or nature whatsoever, caused by either the Concessionaire or the Concessionaire's agents, servants, employees, patrons and customers, or by reason of the use of said Concession Premises by the Concessionaire or by operations conducted by the Concessionaire, then the Concessionaire shall cause said damage or injury to be repaired forthwith, at the Concessionaire's own cost and expense, which repairs shall be completed to the satisfaction of the Borough.

14. Business Registration.

The Concessionaire shall provide proof of business registration to the Borough. The Concessionaire shall collect and remit to the Director, New Jersey Division of Taxation, the use tax due pursuant to the Sales and Use Tax Act on all sales of tangible personal property delivered into this State, regardless of whether the tangible personal property is intended for a contract with a contracting agency. A business organization that fails to provide a copy of a business registration as required by New Jersey law, or that provides false business registration information under the requirements of either of those sections, shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000 for each business registration copy not properly provided under a contract with a public contracting agency.

15. Assignment.

The Concessionaire shall not assign or subcontract the whole or any part of this Agreement without the written consent of the Borough.

16. Trade Fixtures and Improvements. Upon the expiration or earlier termination of this Agreement as provided for herein, then all improvements and fixtures that may be installed by the Concessionaire in the Concession Premises shall become the property of the Borough.

17. Signs. The Concessionaire shall be responsible for all signage related to the operation of the concession. Signage must be in compliance with Borough's ordinances and regulations. Any signs to be displayed on the property must be of a "professional" quality and will carry only information pertinent to the business, such as the Concessionaire's logo or the name or logo of any business which makes or distributes equipment involved in Concessionaire's business. All signs are subject to inspection by the Borough, and no third-party advertising shall be allowed.

18. Modification.

This Agreement shall not be modified, except by written modification signed by both parties.

19. American Goods and Products to be used Where Possible.

Only manufactured and farm products of the United States, wherever available, shall be used in fulfillment of this contract pursuant to N.J.S.A. 40A:1 1-18.

20. Entire Agreement.

This Agreement, including all attachments and appendices referred to in this Agreement, constitutes the entire agreement between the Borough and the Concessionaire.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and do each hereby warrant and represent that their respective signatures, which signatures appear below, have been and are on the date of this Agreement duly authorized with all necessary and appropriate actions to execute this Agreement.

WITNESS & ATTEST

BOROUGH OF BRADLEY BEACH

ERICA KOSTYZ, Borough Clerk

By: _____
LARRY FOX, Mayor

WITNESS & ATTEST

CONCESSIONAIRE

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Company: _____

EXHIBIT A

Notice to Bidders and Bid Specifications

EXHIBIT B

Resolution Awarding Contract

EXHIBIT C

Other Required Contract Documents